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| 10/053,142      | 11/07/2001  | Robert L. Smith      | V-3280-010          | 4757             |

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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/053,142

Applicant(s)

SMITH, ROBERT L.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 2-3, "the vehicle bed" lacks antecedent basis.

In claim 5, line 1, --at least one-- should be inserted after "said".

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2)(a) of such treaty in the English language.

4. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Monroig, Jr.  
(US 6,413,033).

Monroig, Jr. shows guide assembly 16 mounted proximal an open end of vehicle bed 14 and comprising connector guide 26 and support guides 74 attached to a frame, carriage 20 for

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holding cargo, connector 24, and winch 22 which is considered to be at least indirectly “attachable to the vehicle”, as broadly claimed, wherein a first end of the connector is attached to the winch and a second end is attached to the carriage.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monroig, Jr..

Although Monroig, Jr. shows that the support guides are rails in which rollers of the carriage are guided, it would have been an obvious design expediency to have utilized rollers as the guides along which rails of the carriage could ride, as this would be a mere reversal of parts.

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon et al (US 6,099,232).

Dixon et al show, in the figure 9-15 embodiment, guide assembly 210 mounted proximal an open end of vehicle bed 302 and comprising connector guide 280 and support guides 234 attached to a frame, carriage 210 for holding cargo, connector 218, and winch 216 which is considered to be at least indirectly “attachable to the vehicle”, as broadly claimed. Although an

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end of the connector does not attach to the carriage, the connector is attached to the carriage via pulley 276. In the figure 3 embodiment, a similar arrangement is shown in which an end of connector 117 can alternatively be connected to the carriage 110. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the figure 9-15 embodiment of Dixon et al by attaching an end of the connector to the carriage, as the figure 3 embodiment shows that this would simply be an alternate equivalent design expediency.

Re claim 5, although the support guides are rails in which rollers of the carriage are guided, it would have been an obvious design expediency to have utilized rollers as the guides along which rails of the carriage could ride, as this would be a mere reversal of parts.

8. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon et al in view of Goss et al (US 5,354,164, cited by applicant).

Dixon et al do not show the guide assembly to comprise retaining guides having the features as claimed.

Goss et al show a cargo loading and unloading device wherein rollers 32 (retaining guides) have first ends spaced farther apart from each other than are second ends thereof, which in turn are spaced apart a distance equal to or greater than the width of the cargo.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dixon et al with retaining guides having the features of Goss et

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al as described, as this would preclude the complexity of interfitted rollers and rails and allow loading and unloading of different sized cargo carriers.

9. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroig, Jr. in view of Goss et al.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the invention of Monroig, Jr. in view of Goss et al for the same reasons set forth above.

10. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pihlgren (US 3,843,002) in view of Monroig, Jr..

Pihlgren shows the invention essentially as claimed, including guide assembly 40 with a frame and <sup>support</sup> ~~connector~~ guides 49, carriage 51, connector 38, and winch 36, and a <sup>support</sup> ~~connector~~ guide 60, but the <sup>support</sup> ~~connector~~ guide is not attached to the guide assembly.

Monroig, Jr., as noted above, shows this feature.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Pihlgren adding a <sup>support</sup> ~~connector~~ guide to the guide assembly, as shown by Monroig, Jr., as this would prevent chafing and/or snagging of the connector during loading.

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11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pihlgren in view of Monroig, Jr., as applied to claim 1 above, and further in view of Whiting (US 4,630,990).

The modified apparatus of Pihlgren does not show the guide assembly connected to a trailer hitch of the vehicle.

Whiting shows a cargo loading apparatus wherein a carrier 1 can be attached to a truck bumper (fig. 1), bed (fig. 7), or trailer hitch (fig. 11).

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Pihlgren by attaching the guide assembly to a trailer hitch instead of the truck bed, as Whiting explicitly teaches this as an alternate equivalent.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pihlgren in view of Monroig, Jr. and Whiting, as applied to claim 8 above, and further in view of Abbott (US 4,301,953).

The further modified apparatus of Pihlgren does not show the means for attachment of the guide assembly to the trailer hitch to have the features as claimed.

Abbott shows an attachment means for a trailer hitch rack which allows the hitch to be used for its intended purpose (towing), including a peg 32 which extends down to be received in a hollow tube 24 extending upward from a drawbar of the hitch.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have yet further modified the apparatus of Pihlgren by utilizing a peg received in a tube as the

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means of attaching the guide assembly to the hitch, as suggested by Abbott, as this would allow the truck to be used for towing even when loaded with cargo.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is (703) 308-2559.

The fax phone number for the organization where this application or proceeding is assigned is 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.

jwk

April 29, 2003

  
JAMES W. KEENAN  
PRIMARY EXAMINER